



STATE OF INDIANA

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October 30, 2012

Eldon W. Strong
1450 E. Joilet Street
Condo A, Suite 103
Crown Point, Indiana 46307

Re: Formal Complaint 12-FC-316; Alleged Violation of the Access to Public Records Act by the Crown Point Fire Rescue

Dear Mr. Strong:

This advisory opinion is in response to your formal complaint alleging the Crown Point Fire Rescue ("CPFR") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* David H. Nicholls, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you hand-delivered a written request for records to the CPFR on October 3, 2012. As of October 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you allege you have yet to receive any records from the CPFR.

In response to your formal complaint, Mr. Nicholls advised that the CPFR began diligently working on your request shortly after its receipt. It quickly became apparent that there would be approximately 1000 pages of records that were responsive to your request. Shortly after the receipt of your request, Chief DeLore was out of the office on a scheduled vacation. While Chief DeLore was away, a meeting was arranged with you on October 15, 2012 in the Mayor's office to discuss whether the data that had been compiled was sufficient and whether you still desired all 1000 pages. Mr. Nicholls advised that you failed to appear at the October 15, 2012 meeting. Shortly thereafter, Chief of Staff Keith Stevens underwent surgery and was not expected to return to work until October 29, 2012. Mr. Nicholls provided that the City of Crown Point continues to provide the best manpower, service, and equipment available for fire protection to the residents of Center Township. Mr. Nicholls has directed the CPFR to prepare and provide you with copies of all 1000 pages that are responsive to your request, to which the Township will be charged accordingly.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The CPFR is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the CPFR’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, you hand-delivered a written request for records to the CPFR on October 3, 2012. The CPFR was required to respond, in writing, within twenty-four hours of receipt of your hand-delivered written request and acted contrary to section 9 of the APRA when it failed to do so. *See Opinions of the Public Access Counselor 05-FC-176; 11-FC-84; 11-FC-308; 12-FC-63.*

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.* This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public*



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Access Counselor 06-FC-184; 08-FC-56; 11-FC-172. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121.*

As applicable here, the CPFR has provided that there are over 1000 pages of records that are responsive to your request. During the pendency of gathering all records, both Chief DeLor and Chief of Staff Stevens were out of the office. According to Mr. Nicholls, the CPFR attempted to meet with you regarding your request, to which you failed to appear. Mr. Nicholls has further advised that he has directed the CPFR to provide you with all of the records that are responsive to your request, which will ensure that all records will have been produced in approximately thirty days of the receipt of your request. In light of these factors, it is my opinion that the CPFR has complied with the requirements of section 3(b) of the APRA in providing all records in a reasonable period of time in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion, that the CPFR violated section 9 of the APRA by failing to respond in writing to your hand-delivered written request within twenty-four hours. As to all other issues, it is my opinion that the CPFR has complied with the requirements of the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: David Nicholls